

Commenter: Hyperion Telecommunications, Inc.
Applicant: BellSouth
State: South Carolina
Date: November 14, 1997

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)
)
Application by BellSouth)
Corporation et al. for Provision of)
In-Region, InterLATA Services in)
South Carolina)

CC Docket No. 97-208

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OFFICE OF THE SECRETARY

**REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC.
IN OPPOSITION TO BELL SOUTH'S APPLICATION
FOR INTERLATA AUTHORITY IN SOUTH CAROLINA**

Hyperion Telecommunications, Inc. ("Hyperion"), through undersigned counsel, hereby submits its reply comments on the Section 271 application for in-region interLATA authority filed by BellSouth Corporation et al. ("BellSouth") on September 30, 1997.

These reply comments address four issues: 1) BellSouth's failure to comply with its reciprocal compensation obligation under the Telecommunications Act of 1996 ("Act"); 2) BellSouth's failure to show that it is charging cost-based rates; 3) BellSouth's failure to demonstrate adequate OSS performance; and 4) the inadequacy of BellSouth's SGAT.

1. BellSouth Refuses to Comply with its Obligation to pay Reciprocal Compensation for Calls to ISP Providers.

In its opening comments, Hyperion pointed out that BellSouth refuses to pay reciprocal compensation in connection with calls to ISP providers, and showed that this violates its obligation under sections 251(b)(5) and 252(d)(2) of the Act (which are incorporated in the

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competitive checklist -- see section 271(c)(2)(B)(xiii)) to pay reciprocal compensation for "transport and termination of telecommunications."

Since the initial comments were filed, the Virginia State Corporation Commission, in a decision dated October 24, 1997, granted a petition filed by Cox Virginia Telcom, Inc., requesting an order enforcing its interconnection agreement with Bell Atlantic. Bell Atlantic, like BellSouth, has taken the position that calls to ISPs are interLATA calls not requiring reciprocal compensation, even when the ISP is in the same local exchange as the caller, because during the ISP may relay to the caller information obtained from sources outside the local exchange area. The Virginia Commission found that "calls to ISPs as described in the Cox petition constitute local traffic under the terms of the agreement between Cox and BA-VA and that the companies are entitled to reciprocal compensation for the termination of this type of call." Cox Virginia Telcom, Inc., Virginia State Corporation Commission No. PUC970069 (Oct. 24, 1997) at p. 2 (copy attached). The Commission's reasoning decisively refutes the arguments made by BellSouth in this proceeding:

Calls that are placed to a local ISP are dialed by using the traditional local-service, seven-digit dialing sequence. Local service provides the termination of such calls at the ISP, and any transmission beyond that point presents a new consideration of service(s) involved. The presence of CLECs does not alter the nature of this traffic.

Id.

2. BellSouth Has Failed to Establish That It Is Charging Cost-Based Rates.

BellSouth's application is premature because the South Carolina Public Service Commission has not yet established permanent rates, based on completed cost studies. This Commission has noted the importance of whether the prices submitted in an application under

section 271 "were based on completed cost studies, as opposed to interim prices adopted pending the completion of such studies." Ameritech Michigan Order, ¶ 294. The South Carolina Commission plans to issue an order establishing permanent rates in January, 1998. BellSouth should have waited until completion of that proceeding before filing its application, so that the permanent rates would be available for this Commission's review and assessment. Instead, BellSouth is attempting to get the Commission to approve its application on the basis of rates which it knows will be superseded within a month after approval. Moreover, the South Carolina Commission has stated that the new rates to be established in January may be based on a different methodology¹ -- emphasizing the artificiality of a decision based on the interim rates now in effect. The Commission should resist BellSouth's attempt to obtain a premature decision and insist on the opportunity to assess BellSouth's eligibility on the basis of the rates that will actually be in effect when BellSouth exercises the authority it seeks.

In any event, the interim rates approved by the South Carolina Commission are facially deficient, and this Commission need not review the cost studies to arrive at that conclusion. For example, BellSouth admits that it has taken some of its rates for unbundled network elements from existing tariffs. Varner Aff't ¶ 31. It limply states that the rates were "cost justified when they were established." Id. But BellSouth gives no indication what methodology was used to "cost justify" these tariffs. Indeed, the South Carolina Commission explicitly disavows adherence to any particular cost methodology. SCPSC Decision at 56 ("the Commission has not

¹ See SCPSC Decision at 56-57: "There is nothing in the Act that precludes the Commission from using one methodology in establishing initial cost-based rates, while utilizing a different methodology to establish other cost-based rates at a later date."

adopted a particular cost methodology”). A conclusory statement by BellSouth that tariffs were “cost justified when established” is simply not sufficient. See Ameritech Michigan Order ¶ 292 (checklist compliance requires prices based on TELRIC).

In addition, BellSouth’s rates in South Carolina are not geographically deaveraged, as this Commission requires. Local Competition Order, ¶ 765. While the Eighth Circuit set aside the Commission’s deaveraging requirement as an exercise of rulemaking authority, its ruling did not address the Commission’s plain authority to rule on checklist compliance in proceedings under Section 271. Section 271(d)(3)(A) unambiguously confers on the Commission jurisdiction to rule on compliance with the competitive checklist when it is reviewing an application for interLATA authority, and item (ii) of the checklist includes compliance with the cost-based rate requirement of section 252(d)(1). Even under the Eighth Circuit’s interpretation, this is a sufficiently unambiguous conferral of authority over intrastate rates to meet the requirements of Section 2(b) of the Act and Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986). See Ameritech Michigan Order ¶¶ 283-285.

3. State Commission Decisions in Alabama and Florida Confirm that BellSouth Has Not Demonstrated Adequate OSS Compliance.

In its initial comments, Hyperion pointed out that BellSouth had not demonstrated adequate OSS compliance. In particular, Hyperion pointed out that BellSouth’s performance data did not demonstrate that it was providing access at the crucial preordering stage equivalent to the access that BellSouth’s own sales personnel receive when dealing with BellSouth customers. Since the initial comments, the Florida Public Service Commission on November 3, 1997, approved a Staff recommendation that confirms this conclusion. Staff concluded that

BellSouth "is not providing pre-ordering capabilities at parity with what it provides itself." See DOJ Comments, Exhibit 6 (Excerpts from Staff Recommendation, Florida Public Service Commission) at p. 115. The Florida Commission's approval of Staff's recommendation adds support to the Alabama Public Service Commission's conclusion that "BellSouth's OSS interfaces must be further revised to provide nondiscriminatory access to BellSouth's systems as required by § 251(c)(3) of the '96 Act."²

BellSouth's OSS performance is based on a region-wide system and thus must be assessed on a region-wide basis. In terms of a region-wide assessment, the opinions of the Alabama and Florida Commissions are fully as relevant as the South Carolina Commission. And since the Alabama and Florida decisions rested on an independent analysis of the evidence, while the South Carolina Commission's decision rested on a word-for-word adoption of BellSouth's proposed findings, the Alabama and Florida decisions are clearly entitled to more weight.

4. BellSouth's SGAT Is Inadequate.

In its initial comments, Hyperion criticized BellSouth's OSS performance. However, other commenters pointed out correctly that, if BellSouth is allowed to proceed under Track B, it must show that its SGAT offers access meeting the standards of the competitive checklist. BellSouth's SGAT is clearly deficient with respect to OSS. For example, it does not offer access to customer service records, which even BellSouth concedes are part of its OSS obligation. See SGAT § II.A(5)(a).

² A copy of the decision of the Alabama Public Service Commission is attached to the DOJ Comments as Exhibit 5. The quoted language appears at p. 7 of the decision.

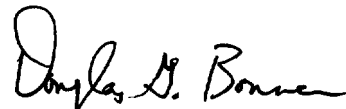
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Unless the SGAT binds BellSouth to provide a particular functionality, its current performance could deteriorate. Hyperion's initial comments (at pp. 9-10) described how, under the current performance of BellSouth's LENS system, there are significant limitations on the ability of CLECs to obtain CSRs as rapidly as BellSouth's salespeople. But under BellSouth's SGAT, BellSouth could curtail even the inadequate access to CSRs that it presently provides.

CONCLUSION

For the foregoing reasons, and those additional reasons discussed in Hyperion's initial comments, BellSouth's application for in-region, interLATA authority in South Carolina should be denied.

Respectfully submitted,



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November 14, 1997

Counsel for Hyperion Telecommunications,
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Applicant: BellSouth
State: South Carolina
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ATTACHMENT

Decision of
Virginia State Corporation Commission
in
Cox Virginia Telcom, Inc.

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 24, 1997
97 OCT 27 AM 8:35

DOCUMENT CONTROL

PETITION OF

COX VIRGINIA TELCOM, Inc.

CASE NO. PUC970069

For enforcement of interconnection
agreement with Bell Atlantic-
Virginia, Inc. and arbitration award
for reciprocal compensation for the
termination of local calls to
Internet service providers

FINAL ORDER

On June 13, 1997, Cox Virginia Telcom, Inc. ("Cox") filed a petition for enforcement of its interconnection agreement with Bell Atlantic-Virginia, Inc. ("BA-VA") and for an arbitration award for reciprocal compensation for the termination of local calls to Internet service providers. Cox requested that the Commission enter an order declaring that local calls to Internet service providers ("ISPs") constitute local traffic under the terms of its agreement and that Cox and BA-VA are entitled to reciprocal compensation for the completion of this type of call.

By Order of August 14, 1997, the Commission directed that a response from BA-VA be filed on or before August 29, 1997, and that a reply be filed by Cox on or before September 15, 1997.

Interested parties were also allowed to submit comments by September 15, 1997. In addition to Cox, replies were filed by TCG Virginia, Inc., Hyperion Telecommunications of Virginia, Inc., AT&T Communications of Virginia, Inc., CFW Network, Inc., R&B Network, Inc., MCImetro Access Transmission Services of Virginia, Inc., MFS Intelenet of Virginia, Inc., WinStar Wireless of Virginia, Inc., and Sprint Communications L.P.

Having considered the response of BA-VA and the replies, the Commission finds that calls to ISPs as described in the Cox petition constitute local traffic under the terms of the agreement between Cox and BA-VA and that the companies are entitled to reciprocal compensation for the termination of this type of call.

Calls that are placed to a local ISP are dialed by using the traditional local-service, seven-digit dialing sequence. Local service provides the termination of such calls at the ISP, and any transmission beyond that point presents a new consideration of service(s) involved. The presence of CLECs does not alter the nature of this traffic.

Accordingly, IT IS THEREFORE ORDERED that:

- (1) The Cox petition is granted.

(2) The termination of local calls to ISPs are subject to the compensation terms of Cox and BA-VA's interconnection agreement.

(3) This matter is dismissed and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Yaron Dori, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004; Carolyn Corona, Legal Assistant, TCG of Virginia, Inc., 2 Lafayette Centre, Suite 400, 1133 21st Street, N.W., Washington, D.C. 20036; Douglas G. Bonner, Esquire, Hyperion Telecommunications of Virginia, Inc., Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116; Wilma R. McCarey, Esquire, AT&T Communications of Virginia, Inc., Room 3-D, 3033 Chain Bridge Road, Oakton, Virginia 22185; Sarah Hopkins Finley, Esquire, MCImetro Access Transmission Services of Virginia, Inc., Williams, Mullen, Christian & Dobbins, P.O. Box 1320, Richmond, Virginia 23218-1320; Michael W. Fleming, Esquire, CFW Network, Inc., R&B Network, Inc., and MFS Intelenet of Virginia, Inc., Swidler & Berlin, 3000 K Street, N.W., Washington, D.C. 20007-5116; Morton J. Posner, Esquire, WinStar Wireless of Virginia, Inc., Swidler and Berlin, 3000 K Street,

N.W., Suite 300, Washington, D.C. 20007-5116; James B. Wright, Esquire, Sprint Mid Atlantic Telecom, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Warner F. Brundage, Jr., Esquire, Bell Atlantic-Virginia, Inc., 600 East Main Street, P.O. Box 27241, Richmond, Virginia 23261; Alexander F. Skirpan, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219; Thomas B. Nicholson, Senior Assistant Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and the Commission's Division of Communications and Office of General Counsel.

A True Copy
Test:

William J. Bridge

Clerk of the
State Corporation Commission

Commenter: Hyperion Telecommunications, Inc.
Applicant: BellSouth
State: South Carolina
Date: November 14, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REPLY COMMENTS OF HYPERION TELECOMMUNICATIONS, INC. IN OPPOSITION TO BELL SOUTH'S APPLICATION FOR INTERLATA AUTHORITY IN SOUTH CAROLINA were served to each on the attached mailing list, either by Hand Delivery (as designated with an asterisk (*)), or by First Class Mail, postage prepaid, this 14th day of November 1997.

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